

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Numbering Resource Optimization)
)
Petition For Forbearance From Further)
Increases In The Numbering Utilization)
Threshold Under 47 U.S.C. § 160(c))

CC Docket No. 99-200

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**THE CELLULAR TELECOMMUNICATIONS AND INTERNET ASSOCIATION'S
PETITION FOR FORBEARANCE FROM FURTHER INCREASES IN THE
NUMBERING UTILIZATION THRESHOLD**

Michael F. Altschul
Senior Vice President, General Counsel

**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**

1250 Connecticut Avenue, N.W.

Suite 800

Washington, D.C. 20036

(202) 785-0081

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Pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c), and section 1.53 of the Commission's Rules, 47 C.F.R. § 1.53, the Cellular Telecommunications & Internet Association ("CTIA")¹ hereby submits its petition for forbearance from further increases in the numbering utilization threshold.

I. INTRODUCTION AND SUMMARY

When the Commission commenced this proceeding, unprecedented growth in demand for numbering resources threatened to exhaust the supply of area codes. A crisis atmosphere prevailed, and the Commission responded by adopting a number of measures to assure the

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

efficient utilization of numbering resources. In particular, the Commission required Local Number Portability (“LNP”) capable carriers in the 100 largest markets to obtain additional numbers in thousand block increments (*e.g.*, thousand block pooling) rather than the ten thousand numbers included in a single “NXX” code. In addition to imposing the thousand block pooling requirement on LNP-capable carriers,² the Commission also adopted utilization threshold requirements for carriers seeking additional numbering resources. As a result of thousand block pooling, in combination with the unprecedented reversal in demand for additional numbers, the projected life of the North American Numbering Plan (“NANP”) has been extended by more than twenty years. The national numbering crisis is now over.³

CTIA and its members support thousand block pooling and the current number utilization threshold requirements. These regulatory mandates established uniform national rules and a more efficient numbering administration, and along with market-driven industry consolidation, have succeeded in removing the specter of imminent NANP exhaust. Significantly, the dramatic success of these basic steps has proven that efficient management of numbering resources does not require the same degree of rigor once thought. To go beyond existing requirements, especially with respect to the number utilization threshold, is not necessary to ensure the careful management of this limited resource. In filing this Petition, CTIA does not seek to abandon the

² To date, only wireline carriers have participated in thousand block pooling. The Commission has required wireless carriers to be LNP-capable by November 24, 2002. While Verizon Wireless, joined by CTIA and its members, has urged the Commission to forbear from this requirement, CTIA and its members support thousand block pooling even as they challenge the local number portability mandate.

³ To be sure, individual area codes will still exhaust, but sufficient growth codes will be available for timely area code relief so that children yet unborn can complete their college and even graduate school education before the familiar NPA-NXX-XXXX NANP will have to be replaced.

use of utilization thresholds or reargue the Commission's decision to reject the "months to exhaust" ("MTE") method of numbering administration. Rather, because extremely efficient numbering administration has been achieved at present utilization levels, CTIA respectfully requests that the Commission forbear only from further increases in the utilization threshold.

Under section 10 of the Communications Act of 1934, as amended ("Act"), the Commission is required to forbear from enforcing provisions of the Act or its rules upon a finding that the provisions are unnecessary to ensure just and reasonable and nondiscriminatory charges and practices, unnecessary for the protection of consumers, and when doing so would be consistent with the public interest. In this instance, forbearing from further scheduled increases in the numbering utilization threshold satisfies all three criteria of section 10. When balanced against the diminished threat of NANP exhaust, the higher utilization levels do not protect consumers nor do they serve the public interest. Rather, they raise the cost of providing service, inconvenience customers by pressuring carriers to shorten the "aging" period, increase the risk that numbering resources will not be available when needed, and inhibit competition among carriers. Forbearance is therefore appropriate under section 10 as a means of reducing regulatory cost and improving consumer welfare.

II. CHANGED CIRCUMSTANCES WARRANT FORBEARANCE FROM FURTHER INCREASES IN THE NUMBERING UTILIZATION THRESHOLD.

The telecommunications industry has vastly changed in the two-plus years since the Commission first adopted numbering utilization threshold requirements for carriers seeking growth codes. When the *First Report and Order* was released in the above-captioned docket, there were strong suggestions that the NANP was in danger of exhaust, largely as a result of the

deployment of new services which depend upon telephone numbers and the explosive growth of existing services.⁴ As the Commission explained,

[t]he rapid growth of competition and the proliferation of new telecommunications services over the past several years have intensified the challenge that we face to meet our responsibilities as the guardian of numbering resources in the United States. Today, an examination of the rapid rate at which new area codes are being assigned reveals the *near-crisis* state of the NANP.⁵

At the time, it was thought the NANP would exhaust before 2010, at a cost of billions of dollars to consumers.⁶

The Commission, therefore, decided to change the mechanisms by which carriers would obtain growth codes. Instead of relying on their own projections of future need, carriers were required to provide evidence that, based on their existing inventory of numbers and recent historical growth, they needed additional numbering resources.⁷ A utilization level of 60 percent

⁴ Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (2000) (“*First Report and Order*”).

⁵ *Id.* ¶ 2 (emphasis added).

⁶ *Id.* ¶ 6.

⁷ *See id.* ¶ 103; *id.* ¶ 104 (“We find that using the MTE Worksheet as the sole criterion for evaluating need is inadequate, because much of the data cannot be verified until after the carrier has already obtained the requested NXX code. Second, the MTE forecast is largely subjective and dependent on good faith projections by each carrier. Further, there is no retrospective accountability to which carriers are held regarding forecasts. To increase the reliability of the MTE projections, we require all non-pooling carriers seeking growth numbering resources to report their utilization level, calculated using the formula below, for the rate center in which they are seeking growth numbering resources with all applications for additional numbering resources. . . . These requirements will provide more reliable, verifiable information to help the NANPA improve efficient distribution of numbering resources and develop more accurate forecasts of both the NANP and individual NPA exhaust.”) (citations omitted)

was ultimately adopted.⁸ In other words, a carrier cannot obtain additional numbering resources in a particular area unless it has assigned 60 percent of its existing supply. The Commission reasoned that a 60 percent threshold struck the proper balance between “encourag[ing] carriers to use as many numbers as possible” and ensuring a sufficient supply of numbers to meet future demand.⁹ A 60 percent utilization threshold was also at the upper-end of the average industry utilization levels at that time.¹⁰

The Commission went on to conclude that the utilization threshold should not remain at 60 percent indefinitely. Rather, the Commission mandated that it should be raised by five percent annually, until the threshold reaches 75 percent.¹¹ Without any cost-benefit analysis (*i.e.* a consideration of the cost of imposing a 75 percent utilization threshold balanced against the benefit of delaying NANP exhaust through these higher utilization levels), the Commission simply concluded that “this mandate should make all carriers take significant and measurable steps to improve their utilization.”¹²

At the time the utilization rules were adopted, imposing the burdens associated with carriers’ obligation to manage their numbering resources to higher utilization levels may have seemed reasonable. Had the high rate of area code and number assignment continued, and

⁸ Numbering Resource Optimization, CC Docket No. 99-200, *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 16 FCC Rcd 306 (2000) (“*Second Report and Order*”).

⁹ *Second Report and Order* ¶ 22.

¹⁰ *Id.* (concluding that average industry utilization levels range from 45 percent to 65 percent).

¹¹ *Id.* ¶ 25.

¹² *Id.*

NANP exhaust actually been realized, the nation would have faced substantial costs both in monetary terms (well into the billions of dollars) and in terms of consumer inconvenience. Today, imminent NANP exhaust is no longer an issue. In fact, NANP exhaust is not foreseeable for at least twenty years, and most likely much longer.

In its most recent projections, NANPA's estimates for NANP exhaust extend into 2025 at the earliest, and 2034 at the latest.¹³ Notably, this analysis is based on a constant projected demand of 11,600 new codes per year, with no consideration made for returned codes, or net code assignment. In 2001, net code assignment was approximately 5,500, well under 11,600 per year.¹⁴ To the extent net code assignment remains under 11,600 per year, NANP exhaust could be extended for decades beyond present calculations.¹⁵ A closer review of the recent data suggests that the assumed 11,600 codes per year may be too high. Whereas Central Office code assignments averaged more than 1,300 per month in the first half of 2000, monthly code assignments averaged less than 1,100 per month in the latter half of the year.¹⁶ This downward trend continued into 2001, where code assignments averaged less than 700 per month in the second half of the year.¹⁷ For 2002, NANPA is on pace to assign only 8,200 codes.¹⁸

¹³ See 2001 NANP Exhaust Projection (rel. October 2001), *at*, <http://docs.nanpa.com/pdf/NRUF/Oct01NANPEXhaustProjection.pdf>. Significantly, this forecast is based solely on wireline participation in thousand block pooling and does not include the effects of wireless participation in number pooling.

¹⁴ *Id.* at 4.

¹⁵ NANPA's exhaust projections extend even further to 2038 with a code demand assumption of 9,900 codes per year. See *id.* Table 4.

¹⁶ See Central Office Codes 2000 Activity Report, *at*, www.nanpa.com (showing total assignments for each month in 2000).

¹⁷ See Central Office Codes Dec. 2001 Activity Report, *at*, www.nanpa.com (showing total assignments for each month).

NANPA's most recent area code analysis further confirms the success of the Commission's optimization measures. On June 5, 2002, NANPA released its NRUF and NPA Exhaust Analysis which extends the exhaust date of 215 NPA codes, seventeen by more than twelve years.¹⁹

In light of the significant deferral of the projected date of NANP exhaust (and the likelihood that it will be delayed further), it is appropriate that the Commission take a closer look at the costs and risks associated with permitting the scheduled increases in the utilization level to go forward. An unnecessarily high utilization threshold, such as those that are scheduled to go into effect in 2003, increases the risk that certain carriers, especially those that are more successful, will have an inadequate supply of numbers available to them to meet customer demand as it presents itself. If higher utilization thresholds are permitted to go into effect, the Commission could unnecessarily harm the competitive operation of certain participants by injecting a bias through its numbering allocation policies. As CTIA has explained, CMRS competition is certain to suffer if some carriers are unable, even occasionally, to assign numbers to new customers.²⁰ As other telecommunications services become more competitive or

¹⁸ See Central Office Code Assignment, May 2002 Activity Report, *at*, www.nanpa.com (showing total assignments for each month in 2002).

¹⁹ 2002 NRUF and NPA Exhaust Analysis (rel. June 5, 2002), *at*, <http://docs.nanpa.com/pdf/NRUF/nruf061501results.pdf>.

²⁰ See Numbering Resource Optimization, CC Docket No. 99-200, *Comments of CTIA* (filed May 19, 2000). In a competitive service such as CMRS, the effects of an inadequate supply of telephone numbers as a result of further increases in the utilization threshold would be more pronounced than in less competitive industries. Rather than competing solely on relevant factors such as price, coverage, and customer service, carriers will be forced to adjust their competitive conduct to their stock of assignable numbers.

experience rapid growth for other reasons, similar risks should be expected. When balanced against the benefits to extending the life of the NANP or any individual area code, the risks associated with higher utilization levels are unwarranted.

While it is obvious that a higher utilization threshold will force carriers to “improve their utilization,”²¹ this higher threshold comes at a cost -- a cost that is no longer justified in light of the recently revised projections of NANP exhaust. Continued efforts to mandate increasingly efficient numbering utilization, without any consideration as to cost, would be arbitrary. Justice Breyer refers to this type of perfectionist aspiration as

“the last 10 percent,” or “going the last mile.” The regulating agency considers a substance that poses serious risks. . . . It then promulgates standards so stringent . . . that the regulatory action ultimately imposes high costs without achieving significant additional safety benefits. . . . Removing that last little bit [of risk] can involve limited technological choice, high cost, devotion of considerable agency resources, large legal fees, and endless argument.²²

The scheduled increases in the utilization levels is precisely the type of regulation Justice Breyer counseled against. Achieving the additional utilization levels will impose significant number management costs on all carriers, and ultimately on consumers, with little discernible benefit to NANP exhaust. Considering the long-term viability of the NANP, such regulation is highly capricious given the present circumstances.

Furthermore, it is well-settled that the Commission is obliged to review its policies and rules where the facts underlying a decision may have changed.²³ As the D.C. Circuit has made

²¹ See *Second Report and Order* ¶ 25.

²² Stephen Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation 11 (1993) (citations omitted).

²³ See Geller v. FCC, 610 F.2d 973 (D.C. Cir. 1979); WWHT, Inc. v. FCC, 656 F.2d 807, 819 (D.C. Cir. 1981).

clear, “changes in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy or explain its failure to do so. In the rulemaking context, for example, it is settled law that an agency may be forced to reexamine its approach ‘if a significant factual predicate of a prior decision . . . has been removed.’”²⁴ In this instance, the factual predicate underlying the Commission’s decision to raise annually the numbering utilization threshold -- the threat of imminent NANP exhaust -- has significantly diminished.

III. FORBEARANCE FROM CONTINUED INCREASES IN THE UTILIZATION THRESHOLD REQUIREMENTS IS ENTIRELY APPROPRIATE UNDER A SECTION 10 FORBEARANCE ANALYSIS.

As explained below, forbearance from further increases in the utilization threshold is consistent with the Act. Section 10 of the Act obligates the Commission to:

forbear from applying any regulation or any provision of this Act to a . . . class of telecommunications carriers or telecommunications services, in any or some of . . . their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.²⁵

In making the public interest assessment, the Act requires consideration of “whether forbearance . . . will promote competitive market conditions, including the extent to which such forbearance

²⁴ Bechtel v. FCC, 957 F.2d 873, 881 (D.C. Cir. 1992) (citations omitted).

²⁵ 47 U.S.C. § 160(a).

will enhance competition among providers of telecommunications services.”²⁶ The Commission has further declared its “commitment to forbear from enforcing provisions of [its] rules that inhibit or distort competition in the marketplace, *represent unnecessary regulatory costs, or stand as obstacles to lower prices, greater service options, and higher quality services for American telecommunications consumers.*”²⁷

With respect to the first prong of the forbearance test, continued application of the scheduled increases in the utilization threshold is unnecessary to ensure that carriers’ charges and practices are just and reasonable and nondiscriminatory. The numbering utilization threshold is not positively correlated with carriers’ charges and practices, but managing to ever higher utilization thresholds definitely will increase carriers’ costs. The Commission has never purported to use its control over carriers’ access to growth codes as a means of regulating such matters. Instead, the Commission has authority, and would retain such authority, under sections 201 and 202 to deal with these issues. Thus, because there is no need to doubt that carrier charges, practices, classifications, or regulations will continue to be just and reasonable and nondiscriminatory, and because forbearance would not affect the Commission’s authority to make certain these principles are protected, the first prong of the forbearance standard is met.²⁸

²⁶ 47 U.S.C. § 160(b).

²⁷ Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition For Forbearance For Broadband Personal Communications Services, WT Docket No. 98-100, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 16857, ¶ 2 (1998) (emphasis added) (“*PCIA Forbearance Order*”).

²⁸ Cf. Federal Communications Bar Association’s Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, *Memorandum Opinion and Order*, 13 FCC Rcd 6293, ¶ 12 (1998) (“*Non-Substantial Transfers Forbearance Order*”) (concluding that the first prong of Section 10 was satisfied because

The second prong of section 10 requires forbearance if continued enforcement of a regulation is unnecessary to protect consumers. Efficient numbering administration is intrinsically a consumer protection matter. The Commission's efforts over the last several years were aimed at reducing the inconvenience associated with the proliferation of new area codes, and delaying the costs associated with NANP exhaust. The data now reveal that the Commission's efforts have succeeded in protecting consumers from these inconveniences and costs. Area code exhaust has been postponed in 215 codes and the threat of imminent NANP exhaust has been overcome. As a result, implementation of the further increases in the utilization threshold is unnecessary to protect consumers.

Consumers will benefit if the utilization threshold is frozen at its current level. One of the consequences of higher utilization levels is the reduced time telephone numbers are permitted to age. Number "aging" is purely a consumer benefit. Both the original user of the telephone number and the new party to whom the number is assigned benefit from an aging interval during which time callers seeking the original user receive an intercept message informing them of the change in their contact information. As numbers are managed more tightly, carriers cannot afford to age a number for even the 90 days permitted in the Commission's rules.²⁹ Rather than lose a potential customer because new numbers are unavailable, a carrier will reassign an aging

review of applications for *pro forma* transactions does not involve review of a licensee's charges, practices, classifications, or services).

²⁹ *First Report and Order* ¶ 29.

number.³⁰ Notwithstanding the Commission's reporting requirements, which only permit residential numbers to be classified as "aging" for 90 days, it is in the best interest of consumers to have numbers age as long as possible. The scheduled increases in the utilization threshold threatens carriers' ability to "age" numbers before they are reassigned.

Raising the utilization threshold also significantly increases carriers' numbering administration costs. This is especially true for wireless carriers, who typically use multiple distribution channels to market their services to the broadest range of consumers. As the utilization threshold increases, all carriers must invest additional time and resources in managing their inventory of numbers. Specifically, overly high utilization requirements frustrate resource allocation across distribution channels. Carrier Telephone Number (TN) administration systems, which utilize automated methods of allocation, become inadequate. Carrier staff resources are forced to focus on the tedious task of allocating small amounts of numbers on a daily basis. Ultimately, marketing plans are curtailed when numbering resources are tight and new service introductions to consumers are hampered. Unnecessarily high utilization levels remove the reasonable safety net, which supports growth and commerce. This is precisely the regulatory burden Justice Breyer counseled against. Achieving the additional utilization levels will impose significant number management costs on all carriers, and ultimately on consumers, with little or no discernible benefit to NANP exhaust.

Indeed, the limited forbearance CTIA seeks poses absolutely no risk to the NANP. By using section 10 forbearance to maintain the utilization threshold at its current level, the Commission may choose to revisit the issue at a later date if necessary to preserve the NANP and

³⁰ In markets where states have not provided timely area code relief, wireless carriers have sometimes been forced to immediately reassign numbers with literally no aging in order to provide service to new customers.

protect consumers. Unlike most other limited resources, numbering resources are not depleted by their use. If carriers are assigned numbering resources which the Commission later determines are underutilized and threaten NANP exhaust, the Commission can implement the higher utilization levels at that later date and achieve the same delay of NANP exhaust that would have been achieved had section 10 forbearance not been granted. By forbearing today from imposing higher utilization thresholds, the Commission is “banking” unassigned numbering resources for use at some later rainy day.

Furthermore, in situations where an individual area code is in jeopardy of exhaust, higher utilization levels do not delay exhaust of the code. Once a code is in jeopardy, states are required to undertake steps for area code relief that are separate and apart from the Commission’s numbering administration mechanisms. Marginally increased utilization levels will do nothing to conserve a code that already is declared to be in jeopardy.³¹ As a result, there are no consumer protection gains to be realized by higher utilization thresholds in jeopardy situations.

The third prong of section 10 requires forbearance if it is consistent with the public interest. The Commission’s analysis must consider whether forbearance promotes competitive market conditions among providers of telecommunications services.³² Under this standard, forbearance from further increases in the utilization threshold is squarely within the public interest. As the Commission has explained, forbearance is in the public interest where its rules impose unnecessary regulatory costs which result in higher prices or reduced services to end

³¹ In a thousand block pooling environment, 100 numbers is the difference between a 65% and 75% utilization threshold.

³² 47 U.S.C. §§ 160(a)(3); (b).

users.³³ Forbearing from further increases in the utilization threshold will reduce regulatory costs which will, in fact, promote competitive market conditions. In competitive markets, reduced costs inure to the benefit of end users -- through lower prices or improved services or both.³⁴ Thus, end-users will be the ultimate beneficiaries of the reduced cost of compliance with higher utilization levels. Alternatively, by permitting further increases in the utilization threshold to take place, consumers will be forced to cover unnecessary costs, and competition is likely to suffer if some carriers are unable, even occasionally, to assign numbers to new customers. When balanced against the threat of NANP exhaust, forbearance is therefore in the public interest.

³³ See *PCIA Forbearance Order* ¶ 2.

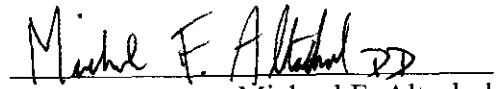
³⁴ See *Non-Substantial Transfers Forbearance Order* at ¶¶ 16, 20 (concluding that forbearance was in the public interest when it eliminated unnecessary regulatory-imposed costs and delays).

IV. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission forbear, pursuant to section 10 of the Act, from executing further increases in the numbering utilization threshold for additional numbering resources.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS &
INTERNET ASSOCIATION**

A handwritten signature in black ink, reading "Michael F. Altschul" followed by a stylized "DD" or similar mark.

Michael F. Altschul
Senior Vice President, General Counsel

1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

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